

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

MARIO A. VELAZQUEZ,	§	
	§	
v.	§	
	§	
BENTELER AUTOMOTIVE –	§	
MEXICO and BENTELER	§	
AUTOMOTIVE CORPORATION,	§	CIVIL ACTION NO. 5:20-CV-00215
	§	
v.	§	
	§	
ALLIED PLASTICS, INC., FORMING	§	
TECHNOLOGIES, LLC and	§	
PACKAGING CONCEPTS & DESIGN,	§	
LLC	§	

**THIRD-PARTY DEFENDANTS’ JOINT
MOTION FOR ENTRY OF FINAL JUDGMENT**

COMES NOW Third-Party Defendants **ALLIED PLASTICS, INC.** (“Allied”), **FORMING TECHNOLOGIES, LLC** (“Forming”), and **PACKAGING CONCEPTS & DESIGN, LLC** (“PC&D”) and file this Joint Motion for Entry of Final Judgment pursuant to FEDERAL RULES OF CIVIL PROCEDURE 56 and 58. Third-Party Defendants respectfully request entry of judgment and would show this Court as follows:

1. As the Court’s Docket will reflect, Third-Party Plaintiffs Benteler de Mexico S.A. de C.V. Mexico/Puebla and Benteler Automotive Corporation (together, the “Benteler Defendants”) initially brought causes of action against each of the Third-Party Defendants for indemnity under Chapter 82 of the Texas Civil Practice & Remedies Code in Civil Action No. 5:16-cv-00238 [Dkt. No. 2]. Importantly, Plaintiff Mario Velazquez

asserted no claims or causes of action against Third-Party Defendants in Civil Action No. 5:16-cv-00238. Third-Party Plaintiffs asserted no claims or causes of action against Third-Party Defendants other than the Chapter 82 indemnity claims [Dkt. No. 2].

2. Third-Party Defendants each filed a Motion for Summary Judgment, seeking dismissal of all claims asserted against them by the Benteler Defendants [Dkt. Nos. 6, 7 and 8]. After extensive briefing by the parties [Dkt. Nos. 9 – 16], on October 16, 2020 the Court granted each one of Third-Party Defendants' Motions for Summary Judgment [Dkt. No. 22].

3. To facilitate any potential appeal of the Court's Order, the Court further granted Third-Party Defendants' Motion to Sever the Benteler Defendants' indemnity claims into this Case No. 5:20-cv-00215 [Dkt. No. 1], as well as the Plaintiff's and Benteler Defendants' joint Motion to Stay Case No. 5:16-cv-00238 [*Id.*]. Third-Party Defendants now move the Court to enter final judgment on all claims asserted against them as permitted by Rule 58.

4. The Federal Rules of Civil Procedure require that every judgment be set out in a separate document. FED. R. CIV. P. 58(a). Rule 58(d) allows any party to request that judgment be entered separately in order to provide certainty to the parties regarding the time for appeal. FED. R. CIV. P. 58, Advisory Committee Notes, 2002 Amendments.¹ The Court's October 16, 2020 Order disposed of all claims asserted

¹ The relevant portion of the Comments provides: "New Rule 58(d) replaces the provision that attorneys shall not submit forms of judgment except on direction of the court. This provision was added to Rule 58 to avoid the delays that were frequently encountered by the former practice of directing the attorneys for the prevailing party to prepare a form of judgment, and also to avoid the occasionally inept drafting that resulted from attorney-prepared judgments. *Id.* (citing *11 Wright, Miller & Kane, Federal Practice & Procedure: Civil 2d*, § 2786).

against Allied, Forming, and PC&D, effectively denying all relief on such claims. However, the parties wish to avoid any uncertainty whether the Court's October 16, 2020 Order was a "judgment." *See, e.g., Creaghe v. Albemarle Corp.*, 98 F. App'x 972, 973 (5th Cir. 2004).

5. Accordingly, pursuant to FED. R. CIV. P. 58 and the Court's prior rulings, Allied, Forming, and PC&D respectfully move the Court to enter the proposed form of judgment attached hereto, which reflects the relief granted in the Court's October 16, 2020 Order. Entry of judgment under Rule 58 is proper as a matter of law and would allow the prompt commencement of any potential appeal by the Benteler Defendants.

6. Allied Plastics, Inc., Forming Technologies, LLC, and Packaging Concepts & Design, LLC jointly pray that the Court grant their Motion for Entry of Final Judgment. Movants further requests any and all other further relief, whether in law or at equity, to which they may be justly entitled.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading was forwarded via the CM/ECF System and served by electronic notice on this 8th day of January 2021.

/s/ Wesley S. Alost

Wesley S. Alost